

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6930 of 2023

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Sharda Prasad S/o Late Raghunath Prasad Resident of Village-Hajiapur, Ward No.27, P.S.-Gopalganj, District-Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Saran, Chapra,
2. The Zonal Chief Forest Officer-Cum-Chairman, Selection Committee, Muzaffarpur, Bihar.
3. The Regional Forest Officer-Cum-Member, Selection Committee, Siwan.
4. The Divisional Forest Officer-Cum-Member

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 8582 of 2023

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Ramcheej Sharma S/o Budhai Sharma Resident of Village-Bantariya, P.S.-Bhorey, District-Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Saran, Chapra,
2. The Zonal Chief Forest Officer-Cum-Chairman, Selection Committee, Muzaffarpur, Bihar.
3. The Regional Forest Officer-Cum-Member, Selection Committee, Siwan.
4. The Divisional Forest Officer-Cum-Member. Selection Committee Siwan

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 6930 of 2023)

For the Petitioner/s : Mr.Rajeev Ranjan, Advocate

For the Respondent/s : Mr.Dhurjati Kumar Prasad (Gp14)

(In Civil Writ Jurisdiction Case No. 8582 of 2023)

For the Petitioner/s : Mr.Rajeev Ranjan, Advocate

For the Respondent/s : Mr.Dhurjati Kr. Prasad (Gp14)

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

2 18-07-2024 Heard Mr. Rajeev Ranjan, learned counsel for the

petitioners and Mr. Dhurjati Kumar Prasad, learned G.P.-14 in

both the cases.

2. Both the writ applications have been preferred



against the order dated 14.07.2022 passed in Miscellaneous Appeal No. 2A of 2011 by learned Additional District and Sessions Judge-VIIth, Gopalganj by which their applications have been dismissed under Order 1 Rule 10(2) of the C.P.C. and also the Misc. Appeal.

3. In that background, when the writ petitions arise out of the same Miscellaneous Appeal No. 2A/2011 (registration no. 117/2013) with the consent of the parties, the same are being taken up together.

4. The case of the petitioners is/are that the respondent authorities published on 30.08.2010 a provisional List of Licenses for operation of Saw mill business within the jurisdiction of Gopalganj district. License no. 155 of 1995 which was standing in the name of Ram Cheej Sharma who was in the list.

5. Sharda Prasad who claims to be partner of Ramcheej Sharma, against the non inclusion of license no. 155/1995 in the provisional list published by the respondent authorities gave his objection on 08.10.2010 and have acknowledgment receipt regarding the same.

6. On the objection dated 08.10.2010, respondent authorities called him vide letter no.1658 dated 30.10.2010 to



appear on 18.11.2010 at 11.00 A.M. with all relevant documents before the Commissioner, Saran Division at Chapra.

7. In spite of best effort of the petitioners, the respondents failed to redress their grievance and also failed to dispose off the objections and on 07.12.2010, published list of Saw mill licensees, who can operate their business within the jurisdiction of Gopalganj District. The license no 155/1995 was not incorporated in the said list.

8. Being aggrieved due to non inclusion of license no 155/1995 in the list dated 07.12.2010, Sharda Prasad filed a Miscellaneous Appeal bearing no. 2A/2011.

9. 11 years later, the original license holder of the Saw Mill, Ramcheej Sharma preferred an intervenor petition under Order-1 Rule 10(2) of the C.P.C. for adding him as co-appellant stating that he was having interest in the Saw Mill business as the licence no. 155 of 1995 was issued in his name.

10. The learned court firstly took up the Intervenor Petition of Ramcheej Sharma and held as follows:

3.The learned counsel for the appellant, learned counsel for intervenor Ram Chij Sharma and learned G.P. placed their respective



arguments in their favour, but they agree on one point that the order on the instant interim petition (filed by Ram Chij Sharma) may be passed along with order in the instant appeal on merit when they were asked by this court as to why it took nearly more than 10 years in getting this case disposed of.

In view of aforesaid circumstances, firstly, I proceed to pass an order on the intervener's petition filed under Order I Rule 10(2) CPC by Ram Chij Sharma for being added as co-appellant. While considering this petition on merit, the argument raised by the learned G.P. are convincing and are worthy to be considered. This intervener Ram Chij Sharma if he was having any interest in the running Saw Mill Business for Saw Mill Business License No. 155/1995



which is said to be issued in his name, then why within stipulated period of 30 days, he has not approached the court vide an Appeal against the order dated 07.12.2010 whereby his license was found not listed for running Saw Mill Business in Gopalganj District. And within 30 days from the very order dated 07.12.2010 neither he preferred any appeal nor even he moved an interim petition for being added co-appellant at very earlier stage and more particularly within the limitation period of 30 days, as if he was having any grievance against the order dated 07.12.2010, he should have preferred legal action in shape of appeal within 30 days of the order as is required to be filed vide resolution of Government of Bihar Environment and Forest Department being



Resolution No. 76/2007 dated 30.08.2010 which provides in Clause 2(VI) that any person aggrieved by the Selection Committee order, can prefer an appeal before District and Sessions Judge within 30 days from the date of order. Thus, on that score itself, the instant interim revision petition is not maintainable. Moreover License No. 155/1995 which is said to be in the name of Ram Chij Sharma, appears to be renewed up till 31.12.1995 as stand revealed by photocopy of the License No. 155/1995 filed by the appellant as well as this petitioner Ram Chij Sharma and respondent Govt. of Bihar which shows that there is no paper on record in favour of intervener Ram Chij Sharma showing renewal of his Saw Mill License No. 155/1995 and that is also grounds not



to accept the interim application of Ram Chij Sharma filed for being added co- appellant in the instant appeal as on that ground too his prayer vide petition under Order 1 Rule 10 (2) CPC does not seem to be genuine and bona fide.

In the backdrop of the said circumstances, the instant interim application filed under Order 1 Rule 10(2) CPC by Ram Chij Sharma on 13.06.2022 is found to be held and accordingly is not maintainable and same is rejected thus.

11. Thereafter, the concerned Court took up the case of Sarda Prasad and in para-4 he held as follows:

4. Now, coming to the merit of the instant appeal which is by Sharda Prasad who asserts himself to running Saw Mill Business pursuant to License No 155/1995 which is said to be issued in the name of Ramcheej



Sharma on the ground of partnership.

The appellant has filed a copy of notaries dated 01.12.2019 which relates to disclosure of fact on notary affidavit that by Ramcheej Sharma that he and Ramcheej Sharma run his business in partnership with one Keshar Nawaz under Saw Mill License No. 155/1995 existing in the name of Ramcheej Sharma. Another deed of partnership dated 28.06.2002 is filed on record and this paper shows partnership business in Keshar Nawaz, & the instant appellant Sharda Prasad. Thus, it stands evident that there is no any Saw Mill License either in the name of Sharda or in the name of Keshar Nawaz with whom this appellant Sharda Praand asserts to have started partnership business since 27.06.2002 and if he is having no license, then to my view, he cannot



challenge the Order of Selection Committee dated 07.12.2010 as he cannot said to be aggrieved persons whereby the Saw Mill License No. 155/1995 which admittedly exist in the name of Ramcheej Sharma. In that view of the matter and as far as partnership deeds are concerned, the same are considered and may be for consideration of any dispute of business arising out in between partners and for their partnership deeds, by any stretch of imagination, the instant appellant Sharda Prasad did not get any right to challenge the Order of Selection Committee dated 07.12.2010. In that view of the matter, the submission of learned G.P. that the instant appellant Sharda Praand has no locus standi to maintain this appeal, is convincing being logical & valid point, and, hence, the same is



accepted against the appellant.

In the result of aforesaid discussions, I come to the firm opinion that the instant appeal is devoid of merit and is not maintainable, and, hence is liable to be dismissed. Accordingly, same is disposed of as dismissed.

12. Aggrieved, both Sarda Prasad and Ramcheej Sharma have filed writ petitions bearing C.W.J.C. No. 6930 of 2023 and 8582 of 2023 respectively.

13. Learned counsel for the petitioners in both the cases submit that a perusal of the facts would show that license was issued in the name of Ramcheej Sharma who had earlier entered into an agreement with Keshar Nawaz and later with Sarda Prasad and in that background, Sarda Prasad was fully justified in submitting the petition. He further submits that when he was in partnership and when the Committee took up a decision on 7.12.2010, he was naturally aggrieved and thus preferred the petition. Learned counsel submits that the Committee erred in not renewing the license despite the applications were presented before it and the learned Court failed to appreciate this fact.



14. Learned counsel for the petitioners conclude by submitting that both the decisions of the Committee as also the learned Judge dated 14.7.2022 are fit to be set aside.

15. Mr. Dhurjati Kumar Prasad, learned GP-14 firstly made objection that Chapter 3 of the Patna High Court Rules deals with filing procedure and section 6 allows the aggrieved party from an order of Civil Court to prefer petition under section 227 of the Constitution of India in civil miscellaneous jurisdiction and not in the writ jurisdiction.

16. Section 6 of the Patna High Court Rules read as follows:

6. Petitions under Article-227 of the Constitution of India in respect of any order or any proceeding before any Civil Court, would be filed in Civil Miscellaneous Jurisdiction and would be numbered as Civil Miscellaneous No. (C. Misc. No.).

17. In view of the fact that office did not point out the defect and already one year has lapsed, though accepting the objection of learned State Counsel, this Court has proceeded with the writ petitions.



18. Learned State Counsel has taken this Court to the counter affidavit filed on behalf of the respondent no.4, the Divisional Forest Officer, Gopalganj with specific reference to paragraphs 11 to 16 to show that the license was issued in the name of Ramcheej Sharma (License No. 155 of 1995) who chose to transfer his ownership to Keshar Nawaz. It was approved by the Divisional Forest Officer, Siwan but no application either by the petitioners or Keshar Nawaz was/were ever submitted to include the licence no. 155 of 1995 in the seniority list of Saw Mill of Gopalganj District.

19. In that background, the representation of Sharda Prasad [communicated to the petitioner vide memo no. 805 dated 3.6.2010 (Annexure-C/1)] was rejected by the Committee on the ground that transfer of ownership itself is/are in violation of provision made under section 7 (5) of the Bihar Saw Mills (Regulation Act, 1990) (Annexure-C/1) (henceforth for short 'the Act').

20. Section 7(5) of 'the Act' read as follows:

(5)If the Licensing Officer is satisfied, either on a reference made to it in this behalf or otherwise, that-

(a)the licensee has parted, in whole or in part with his control over the saw mill or saw pit or has otherwise ceased to operate or own such mill



or saw pit; or

(b)the licensee has without reasonable cause, failed to comply with any of the conditions of the licence or any direction lawfully given by the Licensing Officer or has contravened any of the provisions of this Act or the Rules made thereunder; or

(c)the licensee has, in the premises of the saw mill or saw pit-wood which he is not able to account for satisfactorily and consequently which is liable for confiscation under Section 10.Then without prejudice to any other penalty to which licensee may be liable under this Act the Licensing Officer may, after giving the licensee an opportunity of showing cause, revoke, or suspend the licence and forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject to which the licence has been granted.

20. Learned G.P.-14 submits that it is an admitted fact that license was issued in the name of Ramcheej Sharma who never preferred any appeal before the District and Sessions Judge, Gopalganj. Instead, Sharda Prasad came forward to



prefer the appeal. Worse, Ramcheej Sharma was not even made defendant in the said Miscellaneous Appeal preferred by Sharda Prasad. He submits that a decade later, Ramcheej Sharma came out of deep slumber to file an intervenor petition for his inclusion as co-appellant.

21. In that background, he submits that the Court was well within its right firstly to reject the contention of Ramcheej Sharma as also his intervenor petition and thereafter, proceeded with and rejected the case of Sarda Prasad who admittedly, was not a license holder. He submits that in that background, both the writ petitions are fit to be dismissed as there is no error in the order of learned 7th Additional District and Sessions Judge, Gopalganj.

22. Having gone through the facts of the case as also the materials on record, this Court finds force in the submissions put forward by the learned State Counsel. Admittedly, the Saw Mill (license no. licence no. 155 of 1995) was in the name of Ramcheej Sharma, the Committee taking note of the fact that he never preferred any application for incorporation of the said license in the Seniority list and further averred that even the earlier approval of the transfer of name was erroneous and thus rejected the claim of Sharda Prasad



who admittedly was not a license holder (Annexure-C/1 of the counter affidavit) vide memo no. 805 dated 3.6.2010.

23. It is further an admitted fact that the licence holder, Ramcheej Sharma never preferred any appeal before the learned District Judge against the decision within thirty days and/or thereafter. It was Sarda Prasad who picked up Miscellaneous Appeal No. 2A/2011 in which a decade later, Ramcheej Sharma chose to enter his appearance by filing an Intervenor Petition to incorporate his name as co-appellant.

24. On the one hand, the order was never challenged by the license holder, Ramcheej Sharma while on the other, Sharda Prasad has no *locus standi* to challenge the order as he was not the licence holder. The learned Judge in that background was fully justified in firstly rejecting the Intervenor petition and later the Miscellaneous Appeal.

25. There is no error in the order passed by learned 7th District and Sessions Judge, Gopalganj in Miscellaneous Appeal No. 2A/2011 dated 14.07.2022.

26. Both the writ petitions stand dismissed. No cost.

(Rajiv Roy, J)

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